Supreme Court, U. S.
FILED
JUL 3 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1979

NO. 79-13

ANTOINETTE FOSTER, Appellant

v.

COUNTY SCHOOL BOARD OF PRINCE WILLIAM COUNTY

Appellee

ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

JURISDICTIONAL STATEMENT

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July 3, 1979

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CITATIONS

Cases:

Bond v. Ann Arbor School Dist.,
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Brewer v. Ray,
140 Ga. 596, 101 SE 667 (1919)
Brown v. Board of Education,
347 US 483 (1954)
City of Louisville V. Commonwealth,
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(1909)
Granger v. Cascade County School Dist.,
499 P 2d 780 (Mont. 1972)
Griffin v. County School Board of Prince
Edward County,
VA 377 US 218 (1966)
Harper v. Va. Bd. of Elections,
383 US 663 670 (1966)
Hobson v. Hansen,
327 F. Supp 824 (D.D.C. 1971)
Mathis v. Gordy,
119 Ga. 817 47 SE 171 (1904)
McInnis v. Oglivie,
384 US 322 (1969)
Mills v. Bd of Education,
348 F. Supp 866 (D.D.C. 1972)
Paulson v. Minidoka County School Dist.
93 Idaho 469, 463 P. 2d 935 (1970)

Plessy v. Ferguson,
163 US 37 (1896)
San Antonio Independent School District
v. Rodriguez,
411 US 1 (1973)
Serrano v. Priest,
5 Cal 3d 584, 487 P 2d 1241, 1265 (1971)
Williams v. Page
309 F. Supp 814 (N.D. Ill. 1970)

CONSTITUTION

First Amendment, United States Constitution
Fourteenth Amendment, United States Constitution

STATUTES

The Constitution of Virginia
Article VIII, Sections 1 and 3

OTHER AUTHORITIES

Wyoming Attorney General 1971 Opinion
No. 4 (June 11, 1971).
Wilson, "Social Class & Equal Educational
Opportunity", Harvard Educational Review XXXVIII (1968):7.
U.S. Commission on Civil Rights, Racial
Isolation in the Public Schools (Wash.,
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Chap. 3
McKay, "Political Thickets & Crazy Quilts:
Reapportionment & Equal Protection,"
Michigan Law Review, LXI (963), 671.
68 AmJur 2d Schools & School Districts
Par 6, p 364.

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ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

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JURISDICTIONAL STATEMENT

Antoinette Foster, the appellant, appeals from the final judgment of the Supreme Court of Virginia, dated April 6, 1979, holding that there is a reversible error in the judgment, with a failure to recognize that there is both a state and a federal validity of the concept of a free public education.

OPINIONS BELOW

The April 6, 1979 decision of the Supreme Court of Virginia, which appears in the appendix hereto, p. 1a infra, is not reported in the Virginia Reports.

JURISDICTION

The judgment of the Supreme Court of Virginia, denying free textbooks to all public school children in the state of Virginia, was entered on April 6, 1978. See p. 1a, infra. There was no motion for rehearing. A supplementary notice of appeal to this Court was duly filed in the Supreme Court of Virginia on June 26, 1979. See p. 1a, infra.

This appeal is being docketed in this Court within 90 days from the denial of the petition for appeal. The jurisdiction of the Supreme Court to hear this appeal rests upon 28.U.S.C. par. 1257(2).

QUESTIONS PRESENTED

Whether the refusal to recognize that textbooks are an integral, fundamental part of the education process was violative of historical fact.

Whether the refusal to recognize the internal contradictions in Article VIII, Section 3 of the Virginia Constitution which (1) accords unequal treatment to children because of disparate wealth in regard to textbooks and which (2) errs in its definition of the word "free" (which does NOT mean "open only to those who can NOT afford") is violative of basic human rights by attempting to distinguish between various levels of poor; i.e.---how Poor is Poor?

Whether the refusal to find a reversible error in the Virginia Constitution was contradictory to the statement in the Virginia Constitution (and in ALL State Constitutions and General Statutes except Mississippi) that education is Free and Compul-

sory. If education is compulsory, must it not, also, be free?

Whether the refusal to find a reversible error in the Virginia Constitution was violative of the United States Constitutional validity of the concept of a free public education.

CONSTITUTIONAL PROVISIONS AND RULES

First Amendment, United States Constitution:

. . . education is "inextricably linked to the right to participate in the electoral process and the rights of free speech and free association guaranteed by the First Amendment." (San Antonio Independent School District v. Rodriguez, 411 US 1 (1973).

Fourteenth Amendment, United States Constitution:

. . .the rationality test of the Fourteenth Amendment, i.e. that the state must "accord the same treatment to persons placed by a statute into different classes on the

basis of criteria wholly unrelated to the objective of that statute" . . .

The Constitution of Virginia, Article VIII, Section 1 . . .shall provide for a system of free public education . . .for all children . . .

Section 3 . . . shall provide by law for the compulsory education of every child . . . it shall insure that textbooks are provided at no cost to each child whose parent or guardian is financially unable to furnish them" . . .

RAISING THE FEDERAL QUESTION

Both in the Circuit Court of Prince William County, Virginia and in the Supreme Court of Virginia, the appellant raised the claim that the Virginia Constitution, Article VIII, Section 3 was unconstitutional since it violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This was contrary to the rationality test enunciated in Brown and Rodriguez. The federal question

was raised in the Assignments of Error and again at the oral hearing before the Supreme Court of Virginia. On neither occasion did the Supreme Court of Virginia respond or refer to the federal questions that were raised. Thus, by implication, the Supreme Court of Virginia considered and expressly rejected this federal constitutional claim.

STATEMENT OF THE CASE

On September 9, 1977, defendant's child, an eighth grader, entered the Prince William County School System and was given a bill for textbook rental. Defendant acknowledged that her child used the textbooks, that she is not an indigent and is financially able to pay the fee. However, she claims that she is not liable because she believes that the right to free textbooks transcends the concept of poor vs not-so-poor. Appellant claims, further, that the right to a free public education includes the use of free textbooks since textbooks are an integral

part of the education process. Appellant believes further, that the compulsoriness of public education, i.e., the obligation by law to attend school, places the burden of responsibility on the state to provide for the basics in education: the building, teachers, and the textbook.

Appellant claims further that the Constitution of the State of Virginia violates the Equal Protection clause of the Fourteenth Amendment by failing to meet its rationality test and that Equal Educational Opportunity is denied under this statute by according unequal treatment to children because of disparate wealth.

Appellant claims further, that there exists a United States Constitutional validity of the concept of a free public education.

THE QUESTIONS ARE SUBSTANTIAL

The belief that equal educational opportunity includes free textbooks is a historical fact. For almost a century this concept has been tacitly accepted by the courts, with judicial analysis focusing on the type of facilities that went into a school. The state's duty to provide equal educational opportunity was deemed satisfied only if it provided the same calibre of facilities, i.e. "texts; equipment, teachers". . . (Plessy v. Ferguson 163 US 37 1896).

A free education includes free textbooks since "textbooks are necessarily elements of any school's activity, and as such are indistinguishable from other fixed educational expense items such as school building maintenance and teachers' salaries" (Paulson v. Minidoka County School District 93 Idaho 469,, 463 P.2d 935 (1970); "no fees may be charged for books since they are an integral, fundamental part of the elementary and secondary

education". (Bond v. Ann Arbor School District 383 Mich 693, 178 NW 2d 484 (1970); "no fee may be charged for textbooks based on the "necessity" argument for if an exception were recognized on the grounds of necessity, the necessity would always be found to exist". (Brewer v. Ray 149 Ga 596, 101 SE 667 (1919)"no fees may be charged for any part of the regular public school curriculum" (Wyo. Atty General, 1971 Opin No 4 Jun 11, 1971).

Most of the states which provide free textbooks have unambiguous statutory mandates for this provision. Therefore, since free textbooks have never been an issue, these states have never felt it necessary to seek a judicial ruling on the subject.

The Constitution of Virginia, Article VIII Section 1 states that "the General Assembly shall provide for a system of free public...schools for all children of school age.. Section 3 states that "the General Assembly shall provide by law for the compulsory education of every child". . ."and that textbooks are provided free (but only) "to each child whose parent is unable to afford them".

There are obvious internal contradictions in these statements. "Free" by definition means "open to all". The word "free" cannot be modified or qualified to suit the whims of the Virginia lawmakers.

"Afford" is ambiguous. Is it to be tested by a mere declaration? by some indigency test? more broadly, by an inability to take advantage of a public good or service? And how do we decide and who does the deciding on the issue of "How Poor is Poor"? Some are poor who earn $5000 per annum; others are poor who earn twice that amount. And there are many who are too poor to pay, yet suffer the burden of paying rather than to be exposed to public ridicule in the courts.

Since all children are required by law to go to school (except in Mississippi), the states, in turn, are required by law to

provide children with a free public education. Therefore, the word "compulsory" implies "free".

Because the Virginia textbook rental system fails to meet the rationality test of the Fourteenth Amendment, it is in violation of the Equal Protection clause of that amendment. The Equal Protection clause prevents states from arbitrarily treating people differently under their laws. (Harper v. Virginia Board of Elections 383 US 663, 670 (1966). Statutes have been overturned if they classify "in a way which appears rational, but which nonetheless prove on closer examination to include within a single classification some members not like others in the same group or fail to include some that are like those in the group selected for favored or disfavored treatment. (McKay, "Political Thickets and Crazy Quilts; Reapportionment and Equal Protection," Michigan Law Review, LXI (1963), 671.

By according different treatment to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute, the Virginia Constitution is violating the rationality test of the Fourteenth Amendment. For the purpose of the Virginia lawmakers as stated in their Constitution is to provide a compulsory education; not to group children into fiscal categories in order that textbooks shall or shall not be provided.

All children in this country, including those living in the Commonwealth of Virginia, have both a right and an obligation to attend school. (Brown v. Board of Education 347 US 483 (1954) enforces this belief: "Today education is perhaps the most important function of state and local government . . .it is doubtful that any child may reasonably be expected to succeed in life if he be denied the oppor-

tunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all children" . . .

And the four dissenting voices in Rodriguez took direct issue with the argument that education is not a fundamental, Constitutional recognized interest, claiming instead that education is "inextricably linked to the right to participate in the electoral process and the rights of free speech and free association guaranteed by the First Amendment".

Justices White, Brennan, Marshall, and Douglas asserted that . . . "regardless of whether a fundamental right to education exists, there are rights in education once the state has undertaken to provide them, which, under Brown, must be made available to all on equal terms" . . .They further argued that "any classification affecting education must be subjected to strict judicial scrutiny." (Id 1312-1339).

CONCLUSION

It is true that education is not mentioned in the Constitution nor in any of the amendments to it. The founding fathers, in their attempt to adjust the differing ideologies entangled in the colonial heritages and in American sectionalism, simply relegated education to the individual states, with public education residing as a function of the state and local governments. Thus "the legislature of each state is required by constitutional provisions to provide a school system whereby all children may receive an education. The legislature is required also, to provide a general and uniform system of common schools, where tuition shall be without charge and equally open to all." (68 AmJur 2d Par 6 P 364).

Every state has included provisions for free public education in its constitution and general statutes. (U.S. Commiss. on Civil Rights, Racial Isolation in the Public Schools

(Washington, D.C., U.S. Govt Printing Office, 1967, Chap 3).

Representative cases include People ex rel Nelson v. Jackson Highland Building Corp 400 Ill. 533 81 NE 2d 528 (1948); Malone v. Hayden 329 Pa. 213, 197 Atl. 344 (1938); Grant v. Nichols 94 Mont 452 23 P2d 266 (1933); Piper v. Big Pine School Dist 193 Cal 664 226 Pac 926 (1924).

The Commonwealth of Virginia, therefore, does not have the right to arbitrarily deny this free public education to a particular class of people, especially in view of the fact that the United States Supreme Court itself, continues to display judicial modesty in assessing in areas of disparate wealth. (Rodriguez; McInnis v. Oglivie 334 US 322 (1969).

Wherefore, it is prayed that the judgment of the Supreme Court of Virginia be reversed and that the United States Supreme Court make a judicial redefinition of Equal

Educational Opportunity; that the United States Supreme Court reformulate Article VIII, Section 3 of the Virginia State Constitution, omitting that portion of the text which accords different treatment to children in public schools based on disparate wealth, and that the United States Supreme Court make textbooks free not just to the indigent, but to all children without qualification or modification.

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

DR. ANTOINETTE FOSTER
P. O. Box 1416
Manassas, Virginia
Appellant

Antoinette Foster
pro se

RALPH COON, Esquire
COUNSEL FOR COUNTY SCHOOL
BOARD OF PRINCE WILLIAM
COUNTY
Appellee

July 3, 1979

Proof of Service---Affidavit

I, Antoinette Foster, pro se, appellant herein, depose and say that on the 3rd day of July 1979, I served a copy of the foregoing Jurisdictional Statement to the United States Supreme Court on County School Board of Prince William County, appellee herein, by hand-delivering the same to the offices of Ralph Coon, Esquire, counsel of record for said County School Board, located at 9100-A Center Street, Manassas, Virginia.

The County School Board of Prince William County is the only party required to be served.

Antoinette Foster

Antoinette Foster, PhD, LLB

Subscribed and sworn to before me at Manassas, Virginia this 3rd day of July, 1979.

James L. Niccolls

OFFICIAL SEAL
JAMES L. NICCOLLS
NOTARY PUBLIC VIRGINIA
STATE-AT-LARGE
My Commission Expires Feb 17, 1981

APPENDIX

(a) There were no opinions delivered upon the rendering of the Supreme Court of Virginia's decree.

(b) Earlier opinion in the same case: Circuit Court Order dated October 10, 1978; motion denied.

(c) Copy of judgment, Virginia Supreme Court:

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on

Friday the 6th day of April 1979

Antoinette M. Foster, Appellant

against Record No. 790029
Circuit Court No. L-9299

County School Board of Prince William County, Appellee,

From the Circuit Court of Prince William County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy,
Clerk